Geo. Gray.

AIT SUPPLEMENT.—"CASE AND COMMENT."
THE LAWYERS CO-OPERATIVE PUBLISHING CO.,
ROCHESTER, N. Y.
ORK:
ADWAY.
CHICAGO:
RAND-MCNALLY BLDG.

Case and Comment

NOTES OF

RECENT IMPORTANT, INTERESTING DECISIONS

INDEX TO ANNOTATION OF THE LAWYERS' REPORTS, ANNOTATED

LEGAL NEWS NOTES AND FACETIÆ

VOL. 6 JULY, 1899. No. 2

CASE AND COMMENT

Monthly. Subscription, 50 cents per annum postpaid. Single numbers, 5 cents.

THE LAWYERS' CO-OPERATIVE PUB. CO.,

Rochester, N. Y.

NEW YORK, 79 Nassau St. CHICAGO, Rand-McNally Bldg.

Entered at postoffice at Rochester, N. Y., as second-class mail matter.

George Gray.

The appointment of Senator Gray of Delaware to be a judge of the circuit court of the United States is an act for which President McKinley has received much praise. Both men were honored by the appointment. Senator Gray, a democrat, one of the chief advisers of the previous democratic administration, was chosen to this high judicial office because a republican president recognized his eminent qualifications.

George Gray was born at Newcastle, Delaware, in 1840. He was educated at Princeton, from which he was graduated at the age of nineteen, and he afterwards studied law in the office of his father and at Harvard Law School. He was admitted to the bar in 1863. In the years following his success in the practice of his profession was such that in 1879 he became attorney general of Delaware by appointment of Governor Hall, and continued in the office on reappointment by Governor Stockley. He participated in the national democratic conventions of 1876, 1880, and 1884. He was chosen United States Senator to succeed Thomas F. Bayard, and was re elected in 1887 and 1893. In the words of the "American Law Review," no statesman of his party "had a higher reputation for candor, probity, or judicial fairness than had Senator Gray."

The selection of Senator Gray as one of the members of the Peace Commission in 1898, which met in Paris to settle the terms of our treaty with Spain, was approved even by those who did not approve the views which he was supposed to hold with respect to the acquisition of new territory. It was understood that he was opposed to the acquisition of the Philippines by the United States, but, in the light of all the information presented to our commissioners, he joined in their unanimous conclusion that we must accept the transfer of those islands from Spain.

Judge Gray's appointment to the bench is one (to quote again from the "American Law Review") "for which his learning, talents, and tastes eminently fit him."

Rotation of Judges in Office.

The refusal of a state convention a short time since to renominate one of the judges of its highest court is said by the daily press to have been due to the fact that he had already held the office two terms. This, if true, illustrates the low grade of politics that flourishes in many political conventions, although there have been conventions enlightened enough to regard length of service on the bench as a recommendation rather than a bar to further service.

Sneers against an elective judiciary, which often reveal superciliousness and shallowness in the sneerers, would be amply justified if judicial nominations were always based on the theory that a judgeship is a political prize to be used as often as possible to reward as many hungry politicians as possible. When judges are elected for long terms, and then re-elected if they prove worthy, they rank well with judges chosen by any system. But where judges are elected for short terms, and denied

renomination, they are under the most serious disadvantages. The state does not get the best service of which these men are capable, and, in spite of the fact that some of them are exceptionally able, the court as a whole inevitably ranks lower than it ought to do. Proper state pride and public spirit ought to make it impossible in any state for the theory of rotation in office to get any application to the judges.

Reviving a Dead Issue.

The recent attempt in Pennsylvania to get a decision against the constitutionality of any statute which regulates the sale of intoxicating liquors by making it unlawful to sell without a license was disposed of very quickly by the court as an attempt to revive a practically dead issue of law. De Walt's Appeal, 46 W. N. C. 79. This is the inevitable fate of all such attempts, because they proceed on an entire misconception. They are expressly or impliedly based on the false premise that the sale of intoxicants is illegal unless made legal by statute. That particular untruth seems to have got firm lodgment in many minds. One of the most prominent and eloquent advocates of total prohibition, who is also by profession a minister of the gospel, goes about the country declaring that the United States Supreme Court is committed to the doctrine that license laws are unconstitutional. To prove it he quotes a detached sentence from an opinion of that court in which a license law was in fact held to be constitutional. It is charitable to suppose that the reverend gentleman is merely ignorant of what he presumes to teach. The unmistakable law on this subject agrees with the common sense of practical men in the conclusion that if the majority of the people are not ready entirely to prohibit the sale of intoxicants they may, through their lawmakers, restrict and regulate it as far as they deem best. The fact that they cannot or will not prohibit it altogether does not make it impossible or unconstitutional for them to restrict it.

Trusting the Legislature.

To curb the power of legislatures is the central idea of most persons who distrust the common people. This is a fundamental error. Within the long-established lines of our constitutional freedom the legislatures ought to be left free to speak the will of the people. Temporary mistakes, and perhaps serious mistakes, have been made and will be made by our legislatures. But they represent the public, and any attempt to deprive them of the power to determine the great questions of public policy which legitimately belong to the lawmaking department is not only unwise, but hopelessly futile. The great constitutional guaranties of life, liberty, and property are sufficient protection to the individual without straining them beyond their proper scope. There is a constant pressure on the courts for the annulment of obnoxious statutes, but while the judges sometimes go beyond their proper functions and attempt to revise the legislative discretion, they generally keep within the constitutional boundaries of judicial power with admirable judgment. They clearly teach that the remedy for bad legislation is better legislators. It cannot be too often, too plainly, or too emphatically repeated that popular government cannot go on toward perfection without leaving to the legislatures, with all their capacity for mistakes and folly, the full measure of legislative power. Legislative mistakes must be corrected by better legislation. To put the legislature under guardianship would indicate the failure of government by the people. If people are fit to govern themselves, they can choose legislators who are fit to make laws.

Irritant Reformers.

Gadflies and mosquitoes represent a certain kind of reformers whose chief function is to irritate rather than to cure. Their most conspicuous characteristics are egotism and pessimism. They have a lofty assurance of their own moral and mental superiority, and an intense conviction that the great majority of men are bad. They seem unable to conceive that their opponents may be both honest and intelligent. Acute, possibly brilliant, in mind, their judgment of public measures is fatally false because they misjudge the motives and character of common men. Faith in the people, which is the first qualification of a real reformer or a real statesman, they sadly lack, and this defect is fatal to their soundness of judgment.

Their chief method is denunciation. In blistering their opponents they seem to take a peculiar delight, in which are mingled the stern joy of lashing their enemies and the seductive pleasure of exhibiting their own superior virtue. Disappointment and resentment at the rejection of their leadership embitters their temper and drives them into ex-

a higher reputation for candor, probity, or judicial fairness than had Senator Gray."

with judges chosen by any system. But where judges are elected for short terms, and denied

aggerated statements and violent invective. Their final delusion is to think that the public aversion to them is due to their virtues, when it is in fact due to their offensive arrogance, intolerance, and virulence.

Overabundant exhibitions of these qualities were made at the recent gathering of so called reformers at Buffalo. One of them who has hitherto said much that is good, though mingled with much that fair men condemn, is reported to have said that our Constitution is "a device to keep the people from governing themselves," and that he "would just as soon be ruled by a Czar as by a Constitution of that sort." Some other speakers at this extraordinary convention lashed themselves to similar frenzied utterances. There were sane men there who said sane things. But there were others, not counted insane, whose extravagance and violence of language showed that they had reached a state of mind in which they can no longer lead, but only irritate, their fellow citizens.

Militarism.

A new bogey has lately loomed up before the fearsome imagination of our prophets of evil. They are terrified by the spectre of militarism. There is something pitiful in the alarm of intelligent men at a chimera, but with most of them this state of mind is chronic and constitutional. Their chamber of imaginary terrors is enlarged from time to time by the addition of new spectres, but these merely refresh and intensify their habitual forebodings.

For rhetorical purposes a sensationalist may find the word "militarism" quite useful. It helps to conjure up a vision of oppressed and helpless humanity ground under the cruel heel of some conquering despot at the head of an army. It is an excellent word for the maker of yellow journal headlines and for the frenzied prophet of disaster. Men who really fear that this nation will fall from freedom into militarism are strangely distrustful of their fellow citizens. What man who knows the temper, the spirit, and the character of the American people can have any patience with the idea that they are in danger of subjection to a military dictator? Where is such a despot to get the force by which he can overwhelm us? What soldiers will constitute this dreadful army? When we remember that the largest army that even the most extravagant estimate would provide would constitute but a little force compared with the entire people, and then remember that these soldiers all come from the homes of the people, and are filled with as much patriotism and love of liberty as the alarmists themselves have, it seems like mere drivel to talk about their crushing out the liberty of the country.

There is room for wide divergence of honest and intelligent opinion about the great questions of national policy which must be settled. But the common sense of sane people will determine these questions unterrified by any spectre of "militarism."

Protecting Charter of College Fraternity Chapter.

An arbitrary withdrawal of its charter from a chapter of a women's collegiate fraternity was prevented by Judge Russell in the New York supreme court in the recent case of Heaton *v.* Hull. The attempt was made by a "grand council" of the order, and was based on charges against the standing of the college and the lack of culture and refinement among the women of the college and town. The court, finding that these charges were entirely unproved, and that the grand council had exceeded its authority, granted an injunction to prevent the consummation of the attempted withdrawal of the charter.

The right of the aggrieved members to invoke the aid of equity was fully sustained. The judge says that courts of equity "grasp jurisdiction of other than property injuries where equitable considerations require action to prevent hurt to standing or character which damages may not compensate."

In vindicating the members of the chapter from what he seems to think a malicious or capricious attack, the judge says: "So far as the masculine judgment of feminine culture or refinement, limited as it is in the finer lines, can judge of such delicate subjects, from the appearance of the ladies who were witnesses upon the trial, the members of other chapters would need to be of a rare order to justify holding themselves so superior in acquired and natural qualities as to render uncongenial to them the active and alumnæ members of Beta Beta chapter." Respecting the rights of the alumnæ in the case, the judge says that "the benefits of association with the fraternity were destroyed by the judgment condemning the source of their membership," and that, if their

left free to speak the will of the people. Tem- | bitters their temper and drives them into ex-

title to membership came from a disgraced chapter, they could not affiliate with other members on equal standing, so that their membership would be practically destroyed.

An Injunction against Visiting a Woman.

An injunction against visiting another man's wife or writing to her or in any way communicating with her was recently sustained by the Texas court of criminal appeals. The decision was made in a habeas corpus proceeding for release from imprisonment for contempt of court by disobeying the injunction. The prisoner boldly attacked the injunction as an infringement upon his constitutional right to freedom of speech and the pursuit of happiness, but the court did not so consider it. The chief contention was that a purely personal right could not be protected by equity; but the court, quoting at some length from the note in 37 L. R. A. 783, held that such contention is not supported either by reason or by the actual practice of equity courts. While the general rules of equity were deemed sufficient to support the injunction, the court called attention to Tex. Rev. Stat. art. 2989, authorizing an injunction whenever relief to which a person is entitled "requires the restraining of some act prejudicial to the applicant." In this case the plaintiff sued for damages on account of a partial alienation of his wife's affections, and sought an injunction to prevent a further alienation.

But the rights of the woman in the case remain to be considered. She is not mere property of her husband which he can have sequestered or put into the hands of a receiver. She is herself a person with rights and "troubles of her own." Whatever may be the husband's remedies as against third persons, has he any right to hedge up her freedom? The English case of Reg. v. Jackson (1891) 1 Q. B. 671, denied the right of a husband to confine his wife in his own house in order to give him an opportunity to regain her affections and prevent her from coming under the influence of her relatives who might alienate her from him. But a wife's freedom of action is in some degree limited by injunctions to keep other people from communicating with her. Precedents showing that the courts may award injunctions against courting a ward of court do not apply to a married woman of full age. If, at her husband's suit, another man may be restrained from visiting her, then it would seem that at her suit her husband might be restrained from visiting another woman, and that woman restrained from receiving his visits. We should go toward government by injunction at a rapid rate if courts could interfere with the liberty of persons of full age and sound mind by regulating their social relations and restraining them from having communication with each other in order to keep them from improper influences.

Judicial Independence in Admission of Attorneys.

The power of the courts to fix the standard of admission to the bar, which cannot be lowered by the legislature, is upheld by the majority of the supreme court of Illinois in an elaborate opinion of Chief Justice Cartwright in *Re* Day, 31 Chicago Legal News, 377. On an extensive review of English and American authorities it is held that under a constitutional separation of the departments of government the legislature trenches upon judicial power when it undertakes to override the action of the court in fixing the requirements for admission of attorneys. This decision is at variance with the New York decision in Matter of Cooper, 22 N. Y. 81, by which a statute requiring the admission of an attorney upon a diploma from Columbia Law School was held constitutional. A series of similar acts were thereafter passed in New York state. Chief Judge Comstock dissented in the New York case on this constitutional question, while, on the other hand, two of the justices dissent from the contrary decision in Illinois.

The extent of the Illinois decision is to hold that the legislature cannot force upon the court attorneys who do not meet the requirements of the court rules. It does not deny that the legislature may have some power to prescribe restrictions upon the right to practise law.

No legal questions are more difficult than those relating to the extent of the independence of the courts and the boundaries between legislative and judicial authority. But it seems to be an extreme doctrine to hold that the appointment of attorneys is a necessary or inherent part of judicial power. The qualifications of the judges themselves can unquestionably be fixed by a statute specifying the amount of legal training or experience necessary to make a person eligible to a judicial office. If this is so, it would seem somewhat

that the largest army that even the most ex- | source of their membership," and that, if their

anomalous to hold that the legislature has no power to determine the qualifications of such lesser officers of the courts as attorneys. The question what public policy requires in respect to the standard of admission to the bar seems to be in its nature a question for a lawmaking body to decide. In one state, at least, it has been settled by a constitutional provision. In many states it has been settled by statute. It does not depend upon what we call legal principles, but upon broad considerations of what is best for the public interests. Being in essence a legislative question, it is not clear how it becomes a judicial question merely because the attorneys practise before the courts.

Jurisdiction of New Action after Dismissal.

The right to bring a new action in a state court after dismissal of a prior action on the same demand by a Federal court, into which the cause had been taken by removal, is denied by the Ohio supreme court in the case of Baltimore & O. R. Co. *v.* Fulton, 53 N. E. 265. This court declares that the jurisdiction of the Federal court in case of removal extends to "any suit thereafter brought on the identical cause of action after the former suit has been dismissed by it until the cause of action has been extinguished by a judgment on the merits." The case of Cox *v.* East Tennessee, V. & G. R. Co. 68 Ga. 446, is cited as a precedent; but that was a materially different case, in which the decision was that, after nonsuit in a Federal court, a renewal of the action in the state court was not a part of the original case, or "on the same footing with it" with respect to the statute of limitations.

The possibility that a plaintiff might improperly permit the dismissal of a cause after removal, for the purpose of beginning again in the state court, and thus compel the defendant to remove the cause again or else submit to the state court, is one ground of the Ohio decision. But the unnecessary trouble caused to a defendant by dismissing an action and suing anew is not confined to cases that have been removed from a state court. It does not in other cases prevent the plaintiff from commencing a new action after dismissing the former one, and the difference in respect to actions removed into a Federal court is only in degree.

The distinction between reinstatement of an action and the bringing of a new action does not seem to have been much considered in this case. Because a case can be reinstated only by the court that dismissed it, it is said that "by parity of reasoning," a state court cannot pass on the right of the plaintiff to recommence an action after it has been dismissed by a Federal court. But commencement of a new action, although for the same cause, is not a reinstatement but a distinct and independent case. Exclusive jurisdiction of an action is a very different thing from exclusive jurisdiction of all possible actions for the same cause. An election to bring an action in one of two courts of concurrent jurisdiction is not usually irrevocable. After dismissal of the first one the plaintiff has the same choice between the courts that he had originally. There seems to be no reason why this should not apply where the concurrent jurisdiction is in state and Federal courts. If bringing an action originally in the Federal court does not give it such exclusive jurisdiction of the entire cause of action as to prevent bringing any action therefor in a state court after the Federal suit is dismissed, why should this be the result of removing a suit from a state court into a Federal court? In either case it is difficult to see why, after an action has been dismissed without prejudice to the right to bring a new action, the plaintiff has not the same election that he had in the beginning with respect to jurisdiction.

Index to Notes

IN

LAWYERS' REPORTS, ANNOTATED.

Book 43, Part 6, and Book 44, Part 1.

Mentioning only complete notes therein contained, without including mere reference notes to earlier annotations.

husband's suit, another man may be restrained from office. If this is so, it would seem somewhat

The part containing any note indexed will be sent with Case and Comment for one year for $1.

Among the New Decisions.

Action.

On the vexed question of the right of one person to bring an action on a contract made by other persons for the benefit of the former the case of Buchanan *v.* Tilden (N. Y.) 44 L. R. A. 170, holds that a woman may sue on a contract for her benefit between her husband and a third person, which provided for payment of money to her in case of success in contesting a will, for which the husband procured an advancement of funds, while there were strong moral and family reasons why she should be considered an heir, though not legally such.

Assault.

Liability for assault committed in a joke is involved in State *v.* Monroe (N. C.) 43 L. R. A. 861, where a druggist who dropped croton oil on candy for a customer, to be given to a third person, is held liable for the damages caused.

Bailment.

Liability of a third person to a bailor for injury to property in the hands of a bailee is sustained in New Jersey Electric R. Co. *v.* New York, L. E. & W. R. Co. (N. J.) 43 L. R. A. 849, whether the bailee might bring an action or not.

Banks.

City funds received on deposit by a banker but redeposited by him in other banks, under an arrangement for sharing in the deposits, whereby he receives the same interest that he pays the city and agrees that they shall be drawn only to pay city orders, are held, in Marquette *v.* Wilkinson (Mich.) 43 L. R. A. 840, to be held in trust for the city as against his assignee for creditors.

A drawee bank which pays the good-faith holder of a forged check on which an indorsement is forged is held, in First National Bank

action and the bringing of a new action does not seem to have been much considered in

tion; (IV.) matters of procedure 814

Mark. See EVIDENCE.

v. Marshalltown State Bank (Iowa) 44 L. R. A. 131, to have no right to recover back the money paid.

A very striking application of the rule that a bank is not liable for negligence of a notary employed by it is made in First National Bank v. German Bank (Iowa) 44 L. R. A. 133, where a bank is held not to be liable for the negligence of its assistant cashier, who was a notary public, in failing to give proper notice of the dishonor of an inland draft which the bank held for collection.

Carriers.

A passenger on whom a drunken man is thrown by being jostled while the conductor is removing another drunken man from the car, rightfully and without negligence, is held, in Spade v. Lynn & B. R. R. (Mass.) 43 L. R. A. 832, to have no right of action against the carrier therefor.

The impulsive and unguarded act of a lady passenger, by which she is hurt while trying to escape from a car because of a reasonable fear due to mismanagement of the carrier, is held, in Gannon v. New York, N. H. & H. R. Co. (Mass.) 43 L. R. A. 833, to be properly deemed a consequence of such mismanagement, for which the carrier is responsible.

Riding on the front platform of an electric street car is held, in Watson v. Portland & Cape Elizabeth R. Co. (Me.) 44 L. R. A. 157, not to constitute negligence as matter of law.

Conflict of Laws.

A real-estate mortgage made by a foreign corporation to nonresident creditors to secure a bona fide antecedent debt is held, in Nathan v. Lee (Ind.) 43 L. R. A. 820, to be valid in the state where the land is, although the decisions there hold such a mortgage to be an unlawful preference, if it is not prohibited by the statutes of the state in which the corporation and the creditors reside.

Conspiracy.

Members of a trade association who combine to induce or compel other persons not to deal or enter into contracts with one who will not join the association or conform his prices to those fixed by the association are held, in Doremus v. Hennessy (Ill.) 43 L. R. A. 797, to be liable for the injuries caused to him by loss of business resulting from such combination.

The withdrawal of patronage from a person by members of an association by concerted action is held, in Boutwell v. Marr (Vt.) 43 L. R. A. 803, to be illegal when their concert of action is due to the coercion of a by-law imposing a fine or penalty upon any member who violates it, and the fact that they voluntarily assumed the obligations of their association is held not to relieve the by-law from its coercive effect.

The unsoundness of mind of one of the conspirators at the time of the trial of an action is held, in Tucker v. Hyatt (Ind.) 44 L. R. A. 129, to be no defense to any of the other parties.

Constitutional Law.

The power of the legislature to make the weighing of grain by a state weighmaster at terminal elevators conclusive on the parties is denied in Vega Steamship Co. v. Consolidated Elevator Co. (Minn.) 43 L. R. A. 843, but it is said that an alleged error must be proved by clear, strong, and satisfactory evidence.

Contempt.

Publication pending trial of an action, of an article concerning the cause, which is calculated to prejudice the jury and prevent a fair trial, is held, in Telegram Newspaper Co. v. Com. (Mass.) 44 L. R. A. 159, to constitute a contempt for which a corporation may be criminally liable.

Corporations.

The fact that certificates of stock are issued in favor of the secretary of the corporation, who, with the president, issues them, is held, in Cincinnati, N. O. & T. P. R. Co. v. Citizens' Nat. Bank (Ohio) 43 L. R. A. 777, insufficient to put a person on inquiry as to the secretary's rightful ownership, when the signatures are genuine.

A purchaser at execution sale of corporate stock, with notice that it has been pledged to a third person, is held, in May v. Cleland (Mich.) 44 L. R. A. 163, to be subject to the rights of the pledgee, although the pledge has not been entered on the books of the corporation.

Counties.

The estoppel of a state to question the legality of the organization of a county is decided

in People, *Ex rel.* Attorney General, *v.* Alturas County (Idaho) 44 L. R. A. 122, where the county had been repeatedly recognized for four years by each of the co-ordinate branches of state government as a legal subdivision of the state.

Courts.

The power of a court to authorize the committee of a lunatic to convey land in another state is denied in Hotchkiss *v.* Middlekauf (Va.) 43 L. R. A. 806, although the lunatic and the committee reside within the jurisdiction of the court.

An unusual case as to what constitutes a sitting of a judge in a cause is that of State, *ex rel.* Hezel, *v.* Bland (Mo.) 43 L. R. A. 845, where it is held that a judge sat in the cause so as to be entitled to dissent from the decision and cause the case to be certified to another court on the ground of a conflict of decisions, although he had had no consultation with the other judges on the merits of the case but was on the bench when it was argued and submitted and agreed to the withholding of the decision for a time, and, when that was rendered in his absence, sent to the judge who wrote the opinion a memorandum stating that it conflicted with another decision and that a motion for rehearing ought to be granted, and also filed a dissenting opinion, while he was also on the bench but not consulted when the motion was overruled by his associates in accordance with a previous understanding between them, of which they had notified him.

Jurisdiction to inquire into and control the internal management of a foreign corporation is denied in Condon *v.* Mutual Reserve Fund L. Asso. (Md.) 44 L. R. A. 149, in which an injunction against an assessment upon a member by a foreign corporation was refused.

Disorderly Houses.

The power of a city to assign the limits beyond which houses of prostitution shall not be permitted is held, in L'Hote *v.* New Orleans (La.) 44 L. R. A. 90, to extend to a change of those limits so as to include property which was previously outside of them.

Evidence.

Proof of a signature by mark is held, in Wienecke *v.* Arbin (Md.) 44 L. R. A. 142, to be insufficiently made nearly twenty-five years afterward by testimony of an attesting witness that he certainly saw the signature made or he would not have put his name there, when he is unable to recall the circumstances or the place of the alleged signing,—especially when there is no proof that the maker of the instrument made or authorized its delivery, or that it was read or explained to the maker, who could not read.

Executors and Administrators.

An executor's indorsement of commercial paper by the words "Estate of," followed by his testator's name, and then by his own name with the word "Executor," is held, in Grafton National Bank *v.* Wing (Mass.) 43 L. R. A. 831, not to bind him personally.

Garnishment.

A judgment of another state in a garnishment suit in which the principal defendant, who was a nonresident, was not served and did not appear, but which purports to establish a liability on a contract which is absolutely void under the statutes of the state where it was made, is held, in Stewart *v.* Northern Assurance Co. (W. Va.) 44 L. R. A. 101, ineffectual to protect the garnishee in the state where the principal debtor resides, unless defense was made by the garnishee or his absent creditor notified of the proceedings, if practicable.

A demand against a foreign insurance company is held, in National Bank *v.* Furtick (Del.) 44 L. R. A. 115, to have no situs for the purpose of garnishment in a state where the company has only an agency, when the demand is due to a nonresident for loss of property insured in another state in which the loss was payable.

Gas.

A gas company which negligently permits its supply of natural gas for light and fuel to flow with such pressure that a building is set on fire on account of it is held, in Barrickman *v.* Marion Oil Co. (W. Va.) 44 L. R. A. 92, to be liable for the damages.

Highways.

An ordinance prohibiting hackmen and draymen from stopping their vehicles on certain streets except when actually engaged in re-

business resulting from such combination.

ty of the organization of a county is decided

ceiving or delivering passengers or goods is held, in *Ex parte* Battis (Tex.) 43 L. R. A. 863, to be in excess of charter authority to prevent the encumbering of streets.

Husband and Wife.

A claim of duress as ground for annulling a marriage was rejected in Collins *v.* Ryan (La.) 43 L. R. A. 814, where the proof was that a reluctant and passive consent to the performance of the marriage ceremony was yielded by the husband under pressure brought to bear upon him because it was his duty, under the circumstances, to marry the girl.

Infants.

An attorney employed by the next friend of an infant to prosecute a suit is held, in Beliveau *v.* Amoskeag Co. (N. H.) 44 L. R. A. 167, to have power even after his discharge, of which the other party has no notice, to bind the infant by making a settlement of the suit and accepting payment of the consideration, although he absconds with it.

Injunction.

An injunction to prevent a department store from violating its contract with one occupying floor space for the sale of a particular article, that it will not allow the sale on the premises of any other make of such article, is held, in Standard Fashion Co. *v.* Siegel-Cooper Co. (N. Y.) 43 L. R. A. 854, to be a proper remedy to enforce the contract.

Insurance.

A policy of insurance on a steam fire engine, hose pipe, and hose cart while located and contained in a fire-engine house, "and not elsewhere," is held, in L'Anse *v.* Fire Association (Mich.) 43 L. R. A. 838, to be insufficient to cover the property while being used in attempting to extinguish a fire several hundred feet from the engine house.

Insurance of a kind not known at the time of the passage of a statute exempting insurance on the kinds of business for which corporations may be formed, such as that of guaranteeing the fidelity of officers and the performance of contracts, is held, in People, *ex rel.* Kasson, *v.* Rose (Ill.) 44 L. R. A. 124, to be within the provisions of that statute.

License.

An ordinance requiring a license for the business of contracting for public work is held, in Figg *v.* Thompson (Ky.) 44 L. R. A. 135, to be unconstitutional, because it tends to create a monopoly and increase the burden of property owners, where the statutes require assessments for the cost of improvements to be made upon abutting owners.

An ordinance requiring a license fee to be paid as a condition of buying claims is held, in Bitzer *v.* Thompson (Ky.) 44 L. R. A. 141, to be unconstitutional in case of a person who buys, merely as an investment, a few claims admitted to be just and due but which are not paid because of lack of funds.

Master and Servant.

The duty of a master to give warning of danger to an inexperienced employee not informed of the danger when placed in charge of dangerous machinery is enforced in James *v.* Rapides Lumber Co. (La.) 44 L. R. A. 33, where an employee in a steam saw mill was suddenly called to take a dangerous position in the mill without any instructions or explanation of the movements of the machinery or the risk and hazard of the employment.

Abandonment of service compelled by threats of strikers is held, in Fisher *v.* Walsh (Wis.) 43 L. R. A. 810, not to preclude the employee from recovering the actual benefit conferred by the services already rendered, although the damage sustained by the employer on account of his quitting the service in breach of contract is held properly deducted from the amount of wages earned.

Mines.

The completion of a nonproductive well bored for oil and gas is held in Steelsmith *v.* Gartlan (W. Va.) 44 L. R. A. 107, to vest no title in the lessee under a lease which does not require the lessee to put down more than one well unless gas and oil are found in paying quantities, and when the only consideration for the lease is the prospective oil royalties and gas rentals. The contract is at an end as to both parties as soon as the first well is abandoned as unsuccessful.

Pardon.

The pardoning power of a governor is held, in Sharp *v.* State, *ex rel.* Cason (Tenn.) 43 L. R. A. 788, to extend to cases of contempt.

be insufficiently made nearly twenty-five years

streets except when actually engaged in re-

Parent and Child.

An illegitimate child of an unmarried man and a married woman is held, in Ives *v.* McNicoll (Ohio) 43 L. R. A. 772, to be legitimated by their subsequent marriage after the mother's divorce from the husband, by virtue of a statutory provision for legitimation by marriage of parents. The fact that the mother was married at the time of the birth of the child is held immaterial.

Pledge.

A pledgee's purchase of the pledged property at his own sale is held, in Glidden *v.* Mechanics' Nat. Bank (Ohio) 43 L. R. A. 737, to leave the pledge still in force, unless the pledgeor elects to treat the transaction as a valid sale, in which event he can hold the pledgee accountable for the net proceeds, but cannot hold him liable for conversion so long as the pledgee has possession of the property and can restore it on payment of the debt for which it is pledged.

Police.

Death caused by accident is held, in Slevin *v.* Board of Police Pension Fund Comrs. (Cal.) 44 L. R. A. 114, not to be a death from natural causes, within the meaning of a statute providing pensions for policemen who die from natural causes.

Public Improvements.

Assessments for the sprinkling of streets within a certain territory are held, in Sears *v.* Board of Aldermen (Mass.) 43 L. R. A. 834, to be properly made upon abutting property even if other streets are sprinkled at public expense.

Statutes.

Power of the clerk of one branch of the legislature to supply an omission in a bill which has been sent from the other house, by inserting an enacting clause without any definite action by the legislative body, is denied in People v. Dettenthaler (Mich.) 44 L. R. A. 164, and the enactment of such a bill is held void.

Street Railways.

The gripman of a cable car is held, in Rack *v.* Chicago City R. Co. (Ill.) 44 L. R. A. 127, not to be guilty of negligence in failing to stop or slacken speed because of boys standing about 12 feet from the track, in front of the car, although the car strikes one of them who suddenly starts to run across the track when the car is near him.

Trademarks.

Notwithstanding the rule that a geographical name cannot be a trademark, it is held, in American Waltham Watch Co. *v.* United States Watch Co. (Mass.) 43 L. R. A. 826, that the original manufacturer of Waltham watches may have an injunction against the use of the word "Waltham" by another manufacturer of watches at the same place, unless distinguishing words are used to prevent deception of the public.

A statute authorizing associations or unions of workingmen to adopt labels or devices to distinguish the products of their labor, is held constitutional in Perkins *v.* Heert (N. Y.) 43 L. R. A. 858.

Waters.

Piers built into the waters of Lake Michigan to protect the land of a shore owner from erosion and not in aid of navigation, but the effect of which is also to reclaim submerged land, of which the fee is vested in the state in trust for the people, are held, in Revell *v.* People (Ill.) 43 L. R. A. 790, to constitute a purpresture which the state may cause to be removed, although they are not detrimental to the public interest and will not become so until the state wishes to reclaim and use the land.

Wills.

Jurisdiction to probate a codicil to a will is denied in Couchman *v.* Couchman (Ky.) 44 L. R. A. 136, after the end of the term at which the will was admitted to probate, where the statutes provide for vacating, reversing, or annulling the probate of a will only by appeal or application to equity to impeach the judgment.

Kasson, *v.* Rose (Ill.) 44 L. R. A. 124, to be within the provisions of that statute.

in Sharp *v.* State, *ex rel.* Cason (Tenn.) 43 L. R. A. 788, to extend to cases of contempt.

New Books.

"The Law of Replevin." By Roswell Shinn, LL.D. (T. H. Flood & Co., Chicago, Ill.) 1 Vol. $6.

"Presumptive Evidence." By John D. Lawson. (Central Law Journal Co., St. Louis, Mo.) 1 Vol. $6.

"Massachusetts Law of Landlord and Tenant." By Prescott F. Hall. (George B. Reed, Boston, Mass.) 1 Vol. $5.

"Law of Liability." (For Negligence.) By Edwin W. DeLeon and Sidney N. Moon. (The Spectator Co., New York.) 1 Vol. $5.

"Expressions of Law and Fact Construed by Courts of Georgia." By Salem Dutcher. (Franklin Printing & Pub. Co., Atlanta, Ga.) 1 Vol. $3.

"Foreclosure of Mortgages of Realty." By A. T. Hunter. (The Carswell Co., Toronto, Ont.) 1 Vol. $5.

"Labour Laws of Ontario." (The Carswell Co.) 1 Vol. $1.50.

"Pocket Codes and Statutes of California." (Bancroft-Whitney Co., San Francisco, Cal.) 5 Vols. $12.50.

"Annotated Statutes of Indian Territory." By Dorset Carter. (The West Publishing Co., St. Paul, Minn.) 1 Vol. $10.

"Digest of Decisions as to National Banks." By H. H. Smith. (T. H. Flood & Co.) 1 Vol. $4.

"Pattison's Complete Missouri Digest." (The Gilbert Book Co., St. Louis, Mo.) 4 Vols. $35.

"Valentine's Kansas Digest." (Bowen-Merrill Co., Indianapolis, Ind.) 2 Vols. $15.

"Burns's Indiana Index Digest." Vol. 2. (Bowen-Merrill Co.) $10.

"Welch's Ohio Index Digest." (R. Clarke Co., Cincinnati, Ohio.) 1 Vol. $6.50.

"Letters of Captain Dreyfus to His Wife." (Harper & Bros., New York.) 1 Vol. $1.

"Evans's Illinois Citations and Overruled Cases." (T. H. Flood & Co.) 1 Vol. $6.

Recent Articles in Law Journals and Reviews.

"Confessions—A Brief History and a Criticism."—33 American Law Review, 376.

"A New Phase in Garnishment Law."—33 American Law Review, 367.

"Will a Court of Equity Compel a Purchaser to Accept a Title Resting Solely on Adverse Possession?"—33 American Law Review, 357.

"The Betterment Tax."—33 American Law Review, 347.

"Trial by Judge and Jury."—33 American Law Review, 321.

"When Rights in Personam Give Rise to Rights in Rem."—5 Virginia Law Register, 13.

"Privileged Communications in Judicial Proceedings."—5 Virginia Law Register, 1.

"What is Malice?"—24 Law Magazine and Review, 341.

"State Interference in (a) Contraband Trade, (b) Blockade Running."—24 Law Magazine and Review, 329.

"The Doctrine of Contributory Negligence."—24 Law Magazine and Review, 291.

"Criminal Statistics, 1897."—24 Law Magazine and Review, 305.

"Company Law Reform."—24 Law Magazine and Review, 271.

"Actio Personalis cum Persona Moritur."—19 Canadian Law Times, 129.

"Revision Powers of the Court of Cassation."—15 Law Quarterly Review, 194.

"Winding Up."—15 Law Quarterly Review, 186.

"English Judges and Hindu Law."—15 Law Quarterly Review, 173.

"Mortgagees and Trade Fixtures."—15 Law Quarterly Review, 165.

"The Commonwealth of Australia Bill."—15 Law Quarterly Review, 155.

"Submarine Cables in Time of War."—15 Law Quarterly Review, 145.

"The Law Merchant and Transferable Debentures."—15 Law Quarterly Review, 130.

"Lord Justice Chitty."—15 Law Quarterly Review, 128.

"Lord Herschel."—15 Law Quarterly Review, 123.

"Satisfaction. A Canon of Construction in Courts of Equity."—48 Central Law Journal, 451.

"Legislative Redress for Mental Anguish in Telegraph Cases."—7 American Lawyer, 240.

"Trust and Anti-Trust Legislation."—7 American Lawyer, 236.

"De Minimis non Curat Lex."—7 American Lawyer, 231.

"Purchase of Encumbered Land; Rights and Liabilities of Parties."—48 Central Law Journal, 489.

"Property Rights in Mineral Oil and Natural Gas."—48 Central Law Journal, 470.

"Recovery of Rent after Removal of Ten-

held void.

impeach the judgment.

ant by Summary Proceedings."—6 New York Annotated Cases, 228.

"Use of Affidavits of Jurors on Motion as to Verdict."—6 New York Annotated Cases, 212.

"Action on Judgment."—6 New York Annotated Cases, 196.

"Operation of General Assignments on Trademarks, Good Will, etc."—6 New York Annotated Cases, 176.

"Waiver of Security for Costs."—6 New York Annotated Cases, 168.

"Cycling Law."—3 Legal Counselor, 138.

"Lost and Spoliated Wills."—5 Western Reserve Law Journal, 81.

"The Superintending Control of the Supreme Court over Inferior Courts."—2 Legal News, 333.

"Is Serving Wine to Guests at Certain Times a Misdemeanor?"—3 Indiana Law Journal, 230.

"Effect of Promise by Master to Repair Defective Machinery in the Future."—3 Indiana Law Journal, 219.

"Liability of a Landlord for Leasing Premises Infected with Disease."—3 Indiana Law Journal, 214.

"The adoption of English Law in Maryland."—8 Yale Law Journal, 353.

"Municipal Ordinances Relating to the Removal of Ice and Snow from Sidewalks."—8 Yale Law Journal, 344.

"Lynch Law and Its Remedy."—8 Yale Law Journal, 335.

"The Unanimity of Jury Verdicts, and the Recent Law Abolishing Same."—2 Legal News, 389.

"Liability of a Corporation Recovering Its Property from a Receiver for the Latter's Torts."—48 Central Law Journal, 412.

"Documentary Exceptions to the Rule against Hearsay."—22 New Jersey Law Journal, 163.

"A Glance at Legislative Contempt."—11 Green Bag, 226.

"Legal Position of Women in Ancient Greece."—11 Green Bag, 209.

"Citizenship in Ceded Territory."—11 Green Bag, 203.

"Privileges and Immunities of State Citizenship."—48 Central Law Journal, 431.

"Tramp Corporations."—48 Central Law Journal, 391.

The Humorous Side.

WAS ALWAYS AN INDIAN.—In a case where a white man denied his marriage with an Indian woman after living with her for twenty-five years and laid much stress on the fact that she was an Indian, a judge says: "When he discarded her it was evidently not because she was an Indian, but because she was then an old Indian."

THE COURT APPEARED FOR THE DEFENDANT.—Before a judge "out west" a fat, short, lazy, innocent-looking fellow named Dolph, sometimes given to whisky and cards, stood indicted for gambling. His bond for appearance on the first day of court had been forfeited, but in consideration of the fact that he was a regular customer the forfeiture was set aside on payment of costs. The judge then asked, "Who is your lawyer?" Dolph said he had none. "Well," said the judge, "get one and we will proceed." Dolph looked quizzingly at the judge and said, "I don't want no lawyer, jedge. Jist you and me will try the case." It turned out that the prosecutor's witnesses had defective memories and he could not prove his case, whereupon he tried to put Dolph himself on the stand in defiance of his constitutional rights against criminating himself, but the judge said, "What's your object in this?" "To prove that he gambled," said the prosecutor. "Oh, no," said the judge, "that won't do. Dolph and me can't stand that." Dolph was discharged for lack of evidence, but the court warned him that it wouldn't generally be safe to rely on the court to defend him.

TRAVELED OUTSIDE THE RECORD.—The following is the full opinion of the court in a Pennsylvania case: "An affidavit of defense having been filed, but no affidavit of defense having been handed to the court with the other papers, and none being found in the office of the prothonotary, where it ought to be found when called for, we shall take it for granted that an affidavit which was strong enough to walk away and take care of itself is sufficiently strong to face a jury, and therefore discharge the rule."

American Law Review, 367.

"Will a Court of Equity Compel a Pur-

Gas."—48 Central Law Journal, 470.

"Recovery of Rent after Removal of Ten-